



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

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MEMORANDUM

DATE: August 17, 2017

TO: Family Division Judges
Probate Judges
Circuit Court Administrators
Family Division Administrators
Probate Registers
Juvenile Registers

FROM: Noah A. Bradow, Court Analyst Manager

RE: *In re Killich*: Juvenile Probation Supervision/Oversight Fees

This memo is intended to provide the courts guidance regarding the imposition of juvenile probation oversight fees following the Michigan Court of Appeals (COA) opinion released on April 20, 2017, in the case of [*In re Killich*, ___ Mich App ___ \(2017\) \(Docket No. 329941\)](#). The guidance provided in this memorandum is not an authoritative statement by the Michigan Supreme Court or the Court of Appeals.

In *Killich*, the COA vacated a trial court's order imposing a monthly flat fee for juvenile probation supervision during a term of probation.¹ The court concluded that while there was no doubt "that the \$100 probation supervision fee was an 'extremely minimal fee compared to the true cost' of state supervision ... there [was] no evidence in the record of [the] proceeding to support a finding that the amount imposed in the order is either less than or equal to the cost of service."² Relying on the case of [*People v Juntikka*, 310 Mich App 306 \(2015\)](#), the court reasoned that "imposed probation fees must be specific to the cost the state expends on a particular respondent."³

Because *Killich* addressed only reimbursement for a probation supervision fee, as opposed to other costs of service (e.g. substance abuse testing, counseling), the following guidance is

¹ *In re Killich*, ___ Mich App ___ (2017) (Docket No. 329941), slip op at 6.

² *Id.*

³ *Id.*

tailored to address the court's process for imposing a juvenile probation supervision fee. Below are two options that courts may wish to consider; however, the courts are not limited to these options and may determine another method that complies with the law.

I. Minimum Cost Method

The "minimum cost" method provides the court with a means to calculate the minimum cost of probation services in every case where a juvenile is ordered to probation. While this method requires up-front work by the court, the analysis establishes the minimum amount the court expends in every case and can therefore be used for all cases meeting the minimum threshold. Completing the calculation up front lessens future administrative burdens related to the calculation of probation costs.

a) Establish a "Minimum Probation Services" Policy for Juveniles

The court should review its current juvenile probation practices and establish a policy detailing the minimum level of service provided to each juvenile by juvenile probation staff. If the court utilizes different types or levels of probation (e.g. regular vs intensive probation), a "minimum level of service" policy should be created for each level of probation. In creating the policy, the court should consider the following:

- Staff administration of any needs/risks or other assessments to the juvenile;
- Frequency, type, and duration of contacts with juvenile probationer;
- Activities related to review of the juvenile's educational needs and performance;
- Communications and document review in connection with treatment provided in the community or in a residential setting; and
- Other activities performed in connection with monitoring the juvenile in the community.

b) Calculate Monthly Probation Supervision Costs

Based upon the established policies, the court should then determine the amount of probation staff time necessary to provide the minimum level of services. We recommend the court calculate the cost of staff delivery of the established minimum level of services using the lowest hourly rate of the probation staff for each type of probation the court utilizes (i.e. regular or intensive probation).

c) Determine Probation Supervision Fee Amount

Once the actual cost of probation staff time necessary to deliver the minimum level of services is calculated, the court should determine the amount of monthly⁴

⁴ If the juvenile is on a period of probation that is shorter than a month, the court may need to redetermine the amount based upon a different period of time to ensure the amount charged is for the actual probation oversight services rendered to the juvenile.

probation supervision fee the court will charge. The fee must be “less than or equal to the cost of service” provided.⁵ Because an order for reimbursement must also be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian,⁶ the court may choose to order a probation supervision fee in an amount less than that which is established by policy as the minimum supervision fee. Additionally, if the court changes the type of probation to which the juvenile is ordered (i.e. regular vs intensive), the court may adjust the probation fee accordingly. When adjusting the probation fee, the court must ensure that the juvenile is provided with the corresponding level of probation oversight and services.

II. “Billable Time” Method

As an alternative to the “minimum cost” method described above, the court may choose to track the probation officer’s actual time spent supervising a particular juvenile. Once the court has the actual time spent by the probation officer, the court may use the probation officer’s hourly rate to determine the cost of the probation service. Although this approach may allow the court to seek reimbursement for a larger amount than the minimum cost method, it presents a greater administrative burden. When determining whether to use this approach, the court should consider the potential return on investment.

Ordering the Probation Supervision Fee

If the court orders a probation supervision fee, the amount of the fee must be included in the order of disposition. We recommend that the court utilize the “other” portion of the SCAO-approved forms [JC14a – Order of Disposition, In-Home](#); [JC14b – Order of Disposition, Out-of-Home](#); or [JC 38 – Order for Reimbursement](#)⁷ when ordering the probation supervision fee.

“Minimum Cost” Method

When ordering reimbursement for probation supervision using the “minimum cost” method, we recommend that the court use language such as the following:

“[Juvenile/Parent(s)/Custodian]⁸ shall pay \$X.XX/month for [regular/intensive] probation supervision fee as reimbursement for the minimum level of individual probation services provided by court staff in this case. A copy of how the court calculates minimum probation costs is attached to this order.”

“Billable” Method

When ordering reimbursement for probation supervision using the “billable” method, we recommend that the court use language such as the following: “[Juvenile/Parent(s)/Custodian] shall reimburse the court for the cost of probation supervision provided to the juvenile. The [juvenile/parent(s)/custodian] will be invoiced for these costs on a

⁵ *Killich*, supra at 6.

⁶ MCL 712A.18(2), (3)

⁷ If the court uses the JC38 form, the “other” section of the order of disposition should indicate that reimbursement is ordered in accordance with the attached order for reimbursement.

⁸ The cost of service may be assessed to the juvenile, parent(s), guardian, or custodian. MCL 712A.18(3).

[monthly/quarterly] basis, or as otherwise directed by the court.” As the court bills the juvenile/parent, the court should enter information in the record that demonstrates the costs are directly related to the actual services provided to the juvenile.

The guidance provided above is based on the assumption that probation services are provided by court staff and not juvenile justice workers assigned by the Michigan Department of Health and Human Services.

In addition to the methods described above, the court may employ other lawful approaches to calculating and imposing a juvenile probation fee. The court should ensure that the method it uses to calculate the probation fee is included in the legal record. This will enable the Court of Appeals to determine that the fee is equal to or less than the actual cost of service provided in the case upon review of the record.

If you have any questions, please contact Noah Bradow at 517-373-2451, Robin Eagleson at 517-373-5542, or Julia Norton at 517-373-8995 or e-mail trialcourtservices@courts.mi.gov.